

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROBERT J. BETTS,

Petitioner,

vs.

MAGGIE MILLER-STOUT,

Respondent.

NO. CV-06-326-MWL

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND DISMISSING  
ACTION

BEFORE THE COURT are Petitioner's Objections (Ct. Rec. 13) to the Report and Recommendation to Dismiss this Action (Ct. Rec. 12). After review of the record, including Petitioner's Objections, and for the reasons set forth below and by the Magistrate Judge, **IT IS ORDERED** the Report and Recommendation is **ADOPTED in its entirety**.

Petitioner first challenges the Magistrate Judge's finding that he did not properly exhaust his state court remedies. Petitioner again asserts his Personal Restraint Petition, which raised the same issue as in *State v. Cromwell*, 157 Wash.2d 529, 140 P.3d 593 (2006), was stayed while the Washington State Supreme Court decided the *Cromwell* case. Petitioner seems to assert, because the same federal claim at issue in his petition was fairly presented to the state courts by other litigants in a separate action, this should excuse his obligation to exhaust his own claim to the state's highest court.

1       Petitioner's assertion is flawed. He admits he has not pursued  
2 his Personal Restraint Petition beyond the Washington State Court of  
3 Appeals, claiming the *Cromwell* decision would render such pursuit  
4 futile. The Ninth Circuit, however, has held that the apparent  
5 futility of presenting claims to state courts is not cause for failing  
6 to exhaust state court remedies. See *Noltie v. Peterson*, 9 F.3d 802,  
7 805 (9th Cir. 1993). Therefore, **IT IS ORDERED** the Magistrate Judge's  
8 Report and Recommendation regarding exhaustion is **ADOPTED**.

9       Next, Petitioner claims the Magistrate Judge misconstrued the  
10 issue in his petition and improperly advised that any challenge to the  
11 Washington State Supreme Court's interpretation of a state statute  
12 should be pursued to the United States Supreme Court. Petitioner  
13 contends he is not challenging the Washington State Supreme Court's  
14 interpretation of RCW 69.50.401(a)(1)(ii). Rather, he asserts his  
15 issue was whether he received fair notice of the conduct forbidden by  
16 RCW 69.50.401(a)(1)(ii).

17       In *Cromwell*, the Washington State Supreme Court determined the  
18 prohibition against delivery of methamphetamine in salts form, as well  
19 as base form, was encompassed by former RCW 69.50.401(a)(1)(ii). *State*  
20 *v. Cromwell*, 157 Wash.2d at 536-37, 140 P.3d 593. Petitioner contends  
21 the molecular structure of methamphetamine and methamphetamine  
22 hydrochloride is different. He asserts the Washington Supreme Court  
23 used an inappropriate definition of methamphetamine, and read "salts,  
24 isomers and salts of isomers" into former RCW 69.50.401(a)(1)(ii).  
25 Petitioner claims the law did not inform him that it was a class "B"  
26 felony to deliver a salt of methamphetamine.  
27

